

CHAPTER 12.

THE ADMINISTRATIVE COMPLAINT PROCESS

12.1 Investigation of Complaints Received. The MVD Enforcement Section must receive a formal written complaint before an investigation can begin on the matter. Verbal complaints will not be acted upon. Every written complaint received by MVD is set up as a separate investigative file. Not all investigations become formal dockets and a docket may include more than one investigative file or complaint. Every file opened is subject to review by investigators, chief investigators, attorneys and the Enforcement Director before that file can be closed.

While many files are opened, only approximately 20 percent of the written complaints received become formal legal petitions or dockets. An investigative file may be closed before a docket is filed for many reasons. These reasons include a lack of evidence, lack of resources or possibly mediation between the dealer and consumer by our staff. Many complaints received are closed because there is no violation of the law. Many complaints of minor and first time offenses will generate warning letters. All complaints received no matter how they are closed are kept for a period of time by the agency subject to open records requests.

12.2 Filing of Dockets. Though the formal legal petition is called a Petition and Notice of Hearing, the legal petition will be referred to as a docket in this book to distinguish it from the written complaint initially received by this office. An enforcement attorney is assigned to every docket. Once a docket is filed, a Petition is sent to the entity named as Respondent in the docket. The Petition states what violations the Respondent has allegedly committed and asks for a fine or action against the licensee's license. Respondents may attempt to settle with the enforcement attorney assigned to the case or if the case can not be settled, the case will be set for a hearing in front of an Administrative Law Judge in Austin.

12.3 The Docket Process. The docket process for violations is as follows:

1. Complaint is received by Enforcement, investigated and filed as a docketed petition;
2. Enforcement attorney enters into negotiations with Respondent (the licensee) or the Respondent's attorney;
3. If there is no agreement or dismissal, the matter is set for hearing before the administrative law judge (ALJ);
4. A hearing will be held and the ALJ will write a Proposal for Decision (PFD) to the decision maker (either the board or the director);

5. The Board/Director may hear oral arguments, and can either modify, accept or reject the PFD and issue the final order;
7. A party may wish to file a Motion for Rehearing (MFR) for the Board/Director to consider. The motion is due within 20 days from date of receipt of order. The Board/Director rules on the MFR within 45 days from date the motion was filed.
8. If the MFR is denied, respondents may file an appeal with the Travis County District Court, which must be filed within 30 days from denial of MFR. No appeal to the District Court may be made without filing a timely MFR.

12.4 What to do when you get a Petition. If a licensee receives a letter or other correspondence from this agency, the worst thing the licensee can do is ignore the correspondence. The vast majority of dockets are not filed without an investigator first calling the licensee or at least attempting to contact the licensee in some manner. This initial contact should give the licensee the opportunity to address the petition without further action. Requests for records, formal dockets and other important papers are sent to the licensee's addresses by certified mail. Certified mail returned marked "refused" is considered proper notice to a Respondent. The first thing a licensee should do is call the attorney named in the letter to determine whether the case can be settled amicably.

The following are some of the typical questions respondents have regarding the hearing process. This FAQ sheet is also printed in the brochure "Rights of Respondents in Complaints filed by the Enforcement Section of the Motor Vehicle Division" distributed by MVD to all respondents when a petition is filed against them:

I just received a Petition and Notice of Hearing, what is this?

More than likely someone filed a complaint alleging you did something wrong. An investigation was completed and it was determined that a formal Petition should be filed against you. This is a formal administrative petition that we call a "docket." The Petition is a legal instrument, which states what violations you allegedly committed and asks for a civil penalty (fine) or action against your license. The docket number is at the top of the page and you should refer to this number whenever you contact the agency's office.

What do I do now?

The allegations against you have to be proven (you are "innocent" until proven "guilty"). You are not required under the law to do anything but if you do not respond, a hearing will be set and you will be sent another copy of the petition with a notice of the hearing setting out the date, time and place of the hearing. However, it is recommended that if you desire to settle this case without coming to Austin to attend a hearing, that you call the attorney who signed the cover letter to the Petition and Notice of Hearing to discuss the case. At this time, the attorney can explain to you in more detail what the

alleged violations are and how you can settle the case. The best practice is to always call the attorney first before showing up in Austin at a hearing.

Do I have to stop running my business?

You may continue to operate your dealership as usual and you can renew your license until the Board/Director enters a final order. Of course, it is recommended that you stop any activity that is described as illegal in the petition.

Will I pay a fine?

If you have a reasonable excuse or explanation for the alleged violation, the attorney may offer to dismiss the case with no fine. However, if the assigned staff attorney cannot agree to dismiss the case, you should feel free to negotiate with the attorney for a lower fine if you have good cause.

How much are the fines?

The Enforcement Section has guidelines on fines which take into consideration the seriousness of the violation, the history of the licensee, the harm to the consumer, if any, and what the licensee has done, if possible, to correct the violation.

What if I don't want to settle and pay the fine?

You are not required to settle with the enforcement attorney. You have a right to appear at a hearing and present your case to the administrative law judge who has been assigned to your case. That judge will consider whether you committed the alleged violation and what, if any, civil penalty should be recommended for you to pay.

Are all the hearings in Austin?

All hearings are scheduled to be held in Austin at the State Office of Administrative Hearings. The address and telephone number are contained in the cover letter of the petition you received along with the date and time of your hearing. Occasionally large cases that involve many witnesses will be moved out of Austin.

Should I hire a lawyer?

While the administrative process is an informal one, the hearings are conducted under the Rules of Evidence and Rules of Procedure. Most of the respondents do not appear with an attorney but some do and the choice is up to you. However, if the violations are serious and the enforcement attorney has told you he is looking for a large civil penalty or possible revocation of your license, you are certainly encouraged to hire an attorney.

Can I find out more about the petition without settling before the hearing?

Yes, many times the enforcement attorney will voluntarily send you papers from the file for you to look at if you so desire. While the majority of cases are simple and do not require it, you may request a pre-hearing conference. At that conference a judge will set the dates for the procedure called "discovery" where you may take depositions of the state's witnesses or formally request copies of the state's documents. The enforcement attorney has the same right. Some things you request may be exempt, but the judge will

decide what can and cannot be discovered. At the pre-hearing conference a special date for your hearing is also set.

Can I change the hearing date?

If you call the enforcement attorney, he or she will more than likely agree to a first time continuance. If you cannot reach an agreement, or it is the second time you want to continue the case, you should call the docket clerk and let her explain to you how to file a Motion for Continuance. You should not wait until the last moment to request a continuance, if possible.

What exactly happens at a hearing?

As stated before, the hearings are informal though they do follow rules of evidence and procedure. If you do not have an attorney, the judge will allow you to ask questions as the hearing goes along. The enforcement attorney will present evidence first by calling witnesses and presenting documents to the judge. You will have a chance to object to the documents and question each witness. Then you will present your case. You should be sure and bring your witnesses and any documents you may have that will help explain or prove your case. Under the rules of evidence, you cannot give hearsay testimony. Roughly, that means telling what a person said when that person is not present to be questioned by the other side. This is why you need to bring the person to the hearing if that person's testimony is important to your case. In addition, you should bring original documents, if you have them, and at least two copies of the documents, so you may give one to the judge and to the other party. No decision is made on that day.

So when do I get a decision?

After the hearing, the judge may or may not ask you and the enforcement attorney to prepare written closing arguments. The judge will review all the evidence and argument and write what is called a proposal for decision (PFD). This PFD is the judge's recommendations as to whether or not the violation was committed; what fine, if any, should be paid by the respondent; and how the judge came to that conclusion. The PFD is not the final word on the case. If you or the enforcement attorney disagrees with the result recommended in the PFD, you may file exceptions to the PFD setting out why you believe the judge reached the wrong conclusion. The other party has an opportunity to reply to your exceptions. The PFD along with the exceptions and replies are presented to the Director of the Motor Vehicle Division or the Department of Motor Vehicles Board, depending on who is the final decision maker. You may have an opportunity to make an oral presentation before the Board/Director about your case. The PFD, exceptions and replies will be reviewed. The PFD may be approved as it stands, or certain parts of the proposed order may be changed or the decision maker may send the entire case back for a new hearing. If the PFD is agreed to, the Board/Director usually signs a Final Order accepting the PFD and the order becomes final in 20 days.

Can I appeal the final order?

Yes, in the 20-day period after the final order is signed, you must file a Motion for Rehearing explaining why you should have another hearing. The Motion for Rehearing will be given to the Board/Director to decide whether to grant you another hearing. If the

decision maker disagrees with you and denies your motion, then you must comply with the order. That final order can be appealed to the District Court in Travis County, but it is highly recommended that you hire an attorney, if you haven't done so already, to take the appeal any further. You must file a MFR in order to appeal to the District Court. If you miss the 20-day deadline to file the MFR, you cannot appeal.

When do I pay the civil penalty?

If you have reached an agreement with the enforcement attorney before a hearing, the attorney will send you an Agreed Order. You should sign that order and send it back with your check as instructed in the cover letter. If you have gone through the hearing process, and a violation is found, you must pay the civil penalty when the final order is signed and becomes final. If you do not pay your civil penalty further enforcement action may be taken and you will not be allowed to renew your license.

What would happen if I just don't show up or answer my mail?

If you fail to call the attorney or docket clerk to request a continuance and do not show up on the hearing date, the hearing will be held without you. The enforcement attorney will present evidence and ask for a fine or possibly a revocation of license. If you do not show up at the hearing and you did not file a reply to the petition specifically admitting, denying, or otherwise explaining the allegations in the petition, all the allegations contained in the Petition and Notice of Hearing are found to be true. The judge will then submit a proposed Order of Default to the Board/Director for consideration. If approved, you are held responsible to comply with what is in the Default Order, (for example, paying a fine) a copy of which will be mailed to your mailing and physical addresses. If you do not abide by the Default Order, you may lose not only your current license, but also possibly the right to renew the license or apply for a new one.

Can I just call and talk to the Judge?

You can not call the judge just to tell your side of the story. This is why hearings are held. Neither the respondent (you) nor the complainant (enforcement) may talk to the judge without the presence of the other person either in person or on a conference call. This is to prevent one side from telling its side of the story without the other person having an opportunity to respond. If you feel the enforcement attorney is being unfair or is treating you badly, you are encouraged to call either the attorney's supervisor or the docket clerk and ask for advice.